

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

SEP 11 2015

JAMES KALAMARAS

PLAINTIFF, LONG ISLAND OFFICE

CIVIL COMPLAINT
USCA § 1983

AGAINST-

DOCKET / CASE NO.:

CV-15 5441

NASSAU COUNTY; NASSAU COUNTY
DISTRICT ATTORNEY'S OFFICE; RICK
WHELAN, CHIEF OF NASSAU ORGANIZED
CRIME AND RACKETS BUREAU; ANNE
DONNELLY, DEPUTY CHIEF OF ORGANIZED
CRIME AND RACKETS BUREAU; GEORGE
J. SMIT, ASSISTANT DISTRICT ATTORNEY
OF ORGANIZED CRIME AND RACKETS BUREAU;
NASSAU COUNTY SHERIFF'S DEPARTMENT.
DEFENDANTS.

JURY TRIAL DEMANDED?
YES.

SEYBERT, J

LINDSAY, M.

JURISDICTION

THIS COURT MAINTAINS SUBJECT MATTER AND
GEOGRAPHICAL JURISDICTION SINCE PLAINTIFF
COMPLAINS OF VIOLATIONS BY DEFENDANTS OF
HIS UNITED STATES CONSTITUTIONAL RIGHTS
PROTECTED BY THE U.S. CONSTITUTION, AND
SINCE THE ACTS ALLEGED OCCURRED IN NASSAU
COUNTY, NEW YORK.

PARTIES.

PLAINTIFF:

JAMES KALAMARAS (CC# 15002287)
NASSAU COUNTY JAIL,
100 CARMAN AVE
EAST MEADOW, N.Y. 11554

DEFENDANTS:

NASSAU COUNTY: EXECUTIVE BLDG, 1 WEST ST.
MINEOLA, N.Y. 11501

DISTRICT ATTORNEY'S OFFICE:

RICK WHELAN

ANNE DONNELLY

GEORGE J. SMIT

ADDRESS: 262 OLD COUNTRY RD, MINEOLA, N.Y. 11501

NASSAU COUNTY SHERIFF'S DEPARTMENT

ADDRESS: CIVIL BUREAU, COUNTY OFFICE BLDG, 240
OLD COUNTRY RD, MINEOLA, N.Y. 11501

* PLAINTIFF SUES ALL DEFENDANTS IN THEIR OFFICIAL
AND INDIVIDUAL CAPACITIES.

AS PLAINTIFF'S FIRST CAUSE OF ACTION, THE DEFENDANT NASSAU COUNTY AND THE NASSAU COUNTY COURT SYSTEM MAINTAINS AN UNLAWFUL POLICY, PROCEDURE AND CUSTOM, IN WHICH, ~~THE~~ UPON A PETITIONER FILING A PETITION FOR A WRIT OF HABEAS CORPUS, AS DID PLAINTIFF, AND SUCH IS FILED AT THE SUPREME COURT OF NASSAU COUNTY IN ORDER FOR PLAINTIFF TO OBTAIN JUDICIAL REDRESS FROM A JUDGE OTHER THAN ~~HIS~~ THE JUDGE HANDLING HIS CRIMINAL MATTERS, THE SUPREME COURT, IN VIOLATING PLAINTIFF'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW, UNLAWFULLY FORWARDED PLAINTIFF'S HABEAS CORPUS PETITION BACK TO NASSAU COUNTY COURT AND ADDRESSED IT TO JUDGE PHILLIP GRELLA. MEANWHILE, PLAINTIFF CITED JUDICIAL CORRUPTION, UNLAWFUL AGREEMENTS, AND POLICIES, AS WELL AS REQUESTED JUDGE GRELLA TO RECUSE HIMSELF FOR COMMITTING NEGLIGENT ACTS WHICH HAVE BEEN TARGETED AT PROLONGING PLAINTIFF'S INCARCERATION WHILE AT THE SAME TIME DENYING HIM REVIEW OF LEGAL ARGUMENTS IN HIS PETITION WHICH THE JUDGE KNOWS WILL RESULT IN DISMISSAL OF ALL CHARGES AND OBVIOUSLY RELEASE OF PETITIONER, PLAINTIFF HAS NOW WAITED TWO MONTHS TO BE HEARD ON THIS PETITION.

STATEMENT OF FACTS

1. PLAINTIFF WAS ARRESTED ON 4-14-15 BY SEVERAL FEDERAL AND LOCAL AGENTS, NAMELY THE DRUG ENFORCEMENT AGENCY, NASSAU COUNTY ARSON AND BOMB SQUAD, AND THE NASSAU COUNTY ORGANIZED CRIME AND RACKETS BUREAU.

2. THIS ARREST WAS SOLELY MADE POSSIBLE DUE TO A ~~CONFIDENTIAL~~ INFORMANT, AND NOW ~~COOPERATING~~ WITNESS FOR PROSECUTORS AGAINST THREE CODEFENDANTS. THE "CI" IS NICHOLAS BAIALARDO OF SELDEN NEW YORK.

3. AS A RESULT OF HIS (BAIALARDO'S) ARREST ON APPROXIMATELY MARCH 8¹⁵, 2015 FOR SELLING TO UNDERCOVER FEDERAL AND LOCAL AGENTS, TWO LOADED ILLEGAL ASSAULT WEAPONS, A SUM OF HEROIN, AND ILLEGAL OXYCODONE PRESCRIPTIONS, MR. BAIALARDO IMMEDIATELY STRUCK A DEAL WITH INVESTIGATORS TO TURN-IN HIS ALLEGED ACCOMPLICES WHO ALLEGEDLY TORCHED A CARDIOLOGIST'S OFFICE OWNED BY DR. MARTIN HANDLER AT 38 NORTHERN BLVD, GREAT NECK, N.Y. ON FEBRUARY 25, 2015 AT APPROX. 8:20 PM.

4. MR. BAIALARDO IMPLICATED JAMES CHAMELA AND JAMES KALAMARAS, THE PLAINTIFF.

5. NOTE, THAT BEFORE ARRESTING BAIALARDO, INVESTIGATORS HAD NO EVIDENCE, NO LEADS, AND NO SUSPECTS IN THE ALLEGED ARSON. PLAINTIFF WAS SOLELY IMPLICATED AND ARRESTED BASED ON BAIALARDO'S FALSE STATEMENTS WHICH WERE MADE SIMPLY JUST TO KEEP HIMSELF OUT OF JAIL.

~~6. THE ARREST MADE MAJOR NEWS HEADLINES~~
WHERE DOCTOR ANTHONY J. MOSCHETTO, HANDLER'S ESTRANGED BUSINESS PARTNER, AND ALSO A BOARD CERTIFIED CARDIOLOGIST, WAS NOT ONLY CHARGED WITH CONSPIRING TO HAVE HANDLER'S OFFICE TORCHED, BUT IS ALSO CHARGED WITH CONSPIRING TO KILL HANDLER, AND TO HAVE HIS WIFE ASSAULTED.

7. A SEARCH OF MOSCHETTO'S SANDS POINT, NY. MANSION TURNED UP A STOCKPILE OF ILLEGAL ASSAULT WEAPONS, A GRENADE, DOZENS OF KNIVES, AND ENOUGH AMMUNITION TO SUPPORT A SMALL ARMY.

8. PLAINTIFF PERSISTENTLY PROCLAIMED HIS INNOCENCE SINCE DAY ONE, SPOKE TO NO ONE, DID NOT WAIVE HIS MIRANDA RIGHTS, AND DEMANDED, IN WRITING, TO APPEAR AT THE GRAND JURY TO TESTIFY ON HIS OWN BEHALF, PURSUANT TO N.Y.S. CRIMINAL PROCEDURE LAW § 190.50.

9. PLAINTIFF WISHED TO TELL A GRAND JURY, AND PRESENT WITNESS TESTIMONY AND/OR STATEMENTS, WHICH PLACE HIM SOMEWHERE OTHER THAN THE SCENE OF THE CRIME AT THE TIME IT WAS COMMITTED,

10. WITHIN 144 HOURS OF HIS ARREST, OR THE AFTERNOON OF APRIL 20, 2015, AT PRECISELY 12:40 PM, THE PLAINTIFF WAS ENTITLED TO A FELONY EXAM, OR IN THE ALTERNATIVE, HE WAS ENTITLED TO RELEASE ON HIS OWN RECOGNIZANCE PURSUANT TO NEW YORK CRIMINAL PROCEDURE LAW SECTION 180.80.

(SEE STENOGRAPHIC TRANSCRIPTS OF APRIL 20, 2015-PM.- ATTACHED AS EXHIBIT)

I. N.Y.CPL § 180. VIOLATIONS

11. THE "180.80" ISSUE BECAME THE SUBJECT OF EXTENSIVE ARGUMENTS ON APRIL 20, 2015, BY DEFENSE COUNSEL, THE COURT, AND ASSISTANT DISTRICT ATTORNEY OF ORGANIZED CRIME AND RACKETEER BUREAU, GEORGE SMIT, ESQ.

12. THERE ARE ONLY A FEW REASONS WHY A FELONY EXAM MAY BE ADJOURNED, NONE OF WHICH OCCURRED IN THESE PROCEEDINGS. THERE IS NO STATUTORY ALLOWANCE IN NEW YORK STATE FOR EITHER PROSECUTORIAL OR JUDICIAL WAIVER OF THE HEARING. [ALSO SEE PEOPLE V. HOGAN, 5 misc.3d 151, 780 NYS 2d 883, [ROCHESTER CITY CT., 2004]]

17. ADDITIONALLY, THE RIGHT TO WAIVE A PRELIMINARY HEARING HAS BEEN VESTED SOLELY WITH A DEFENDANT. DEF. PLAINTIFF, UP UNTIL THIS POINT, HAS NOT WAIVED HIS RIGHT TO A PRELIMINARY HEARING, AND IN COURT ON THAT DAY, DEMANDED RELEASE DUE TO THE PROSECUTOR'S FAILURE TO AFFORD HIM A FELONY EXAM BY 12:40 PM ON 4-20-15, WHICH THE JUDGE ADMITS PLAINTIFF SHOULD HAVE BEEN RELEASED, IF NOT FOR AN UNLAWFUL POLICY.

18. WHAT TRANSPIRED AFTER PLAINTIFF'S REQUEST FOR RELEASE PURSUANT TO CPL 180.80, WAS THAT THE COURT REVEALED AND CONFIRMED THE EXISTENCE OF AN UNLAWFUL "POLICY" AND "AGREEMENT" BETWEEN THE NASSAU COUNTY COURT, THE NASSAU COUNTY LEGAL AID SOCIETY, THE NASSAU COUNTY DISTRICT ATTORNEY'S OFFICE, AND THE UNLAWFUL PRACTICE OF SUCH POLICY AND AGREEMENT.

19. IN THE STENOGRAPHIC MINUTES OF APRIL 20, 2015 PAGE 6, LINE 11, THE JUDGE STATES:

"SO WE HAD A DISCUSSION, AND I THINK YOU KNOW THAT MY VIEW IS THAT IF WE WERE IN THE HABIT IN THIS COUNTY OF JUST GOING BY THE STATUTE, THEN THE STORY OF THE (CPL) 180.80 WOULD BE VERY CLEAR, HE'S BEEN IN CUSTODY SINCE APRIL 14th AT 12:40, AND HIS 180.80 HAS RAN TODAY AT 12:40. IT WAS LAPSED."

16. PREVIOUSLY, THE JUDGE ADMITS THAT THE COURT, AND THE DA'S OFFICE, AS WELL AS LEGAL AID SOCIETY, ARE NOT IN THE HABIT OF FOLLOWING STATUTES, SPECIFICALLY §140.80 OF THE CRIMINAL PROCEDURE LAW OF NEW YORK.

17. THE JUDGE THEN ADMITS THAT PLAINTIFF'S CPL §140.80 HAD EXPIRED ON APRIL 20, 2015 AT ~~12:40 PM~~, AND THAT IF NASSAU COUNTY AND ITS JUDICIAL DEPARTMENTS AND AGENCIES FOLLOWED THE LETTER OF THE LAW RATHER THAN MAKE OFF THE RECORD AGREEMENTS CONCERNING PLAINTIFF'S FREEDOM AND LIBERTY, WITH PARTIES THAT DID NOT INCLUDE PLAINTIFF, NOR HIS ATTORNEY, (STEPHEN KUNKEN, ESQ.), THEN PLAINTIFF WOULD HAVE BEEN RELEASED. PLAINTIFF, AS A RESULT, HAS SUFFERED MALICIOUS PROSECUTION AND WRONGFUL IMPRISONMENT BY DEFENDANT.

18. IN VIOLATION OF PLAINTIFF'S 1ST, 6TH, 5TH, 8TH AND 14TH AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION, THAT DID NOT HAPPEN. PLAINTIFF SHOULD HAVE BEEN RELEASED ON 4-20-15, AND WOULD HAVE REMAINED AT LIBERTY UNTIL ~~RECEIVED~~ THIS CURRENT DATE IN LIGHT OF THE CPL §190.50 VIOLATION CLAIMED BELOW.

19. IN LIGHT OF THE EXISTENCE OF "THE ~~AGREEMENT~~ AGREEMENT" AND THE "POLICY PURSUANT TO THAT AGREEMENT", (SEE STENOGRAPHIC TRANSCRIPTS, 4-20-15, P.M. CALENDAR, EXHIBIT A, PAGE ~~6~~, LINE 17)

PLAINTIFF'S ENTITLEMENT TO EITHER RELEASE FROM CUSTODY, OR A FELONY EXAM UPON THE CHARGES HOLDING HIM, WAS CIRCUMVENTED AND UNLAWFULLY DENIED. PLAINTIFF COULD HAVE HAD ALL CHARGES DISMISSED AT SUCH A HEARING IN THIS CASE, WHERE THERE IS CLEAR EVIDENCE THAT PLAINTIFF WAS IN PORT JEFFERSON AT (N.Y.) THE TIME THE CRIME WAS COMMITTED - OVER 40 MILES AWAY FROM GREAT NECK, NY.

20. THIS AGREEMENT BY DEFENDANTS COUNTY OF NASSAU, NASSAU COUNTY DISTRICT ATTORNEY'S OFFICE, LEGAL AID SOCIETY OF NASSAU COUNTY WAS AN UNLAWFUL ACT, AGREEMENT AND POLICY BEING PRACTICED IN THE NORMAL COURSE OF THEIR DUTIES THAT ALL PARTIES ACTIVELY PARTICIPATED IN AND AGREED UPON FOR AT LEAST MORE THAN "14 YEARS", AND A "LONG-STANDING PRACTICE", WHICH SUCH PRACTICE WAS THE DIRECT AND PROXIMATE CAUSE OF PLAINTIFF'S IMPRISONMENT.

21. THE JUDGE ADMITS ON PAGE 7, LINE 1 THAT THE "DA CAN CHOOSE TO EITHER HAVE A FELONY EXAM., OR THEY PRESENT THE CASE TO THE GRAND JURY." AND "WHERE THERE'S A DEMAND [FOR A FELONY EXAM] THE CASE COMES TO MY PART AND THEN THERE'S AN AGREEMENT THAT THE CASE CAN BE ADJOURNED FOR TWO DAYS IF THE DEFENDANT WANTS TO DEMAND

A FELONY EXAM.... So THE WAY IT WOULD PLAY HERE, MR. KUNKEN, YOU'VE DEMANDED THE EXAM NOW....

YOU CAN DEMAND IT NOW ON HIS BEHALF, ...

AND THEN THE PRACTICE HAS BECOME, AND THIS IS A VERY LONG-STANDING PRACTICE WHERE NOW THE CASE GETS ADJURNED FOR TWO DAYS AND THE PEOPLE HAVE TO HANDLE IT AS IF IT WERE THE NEXT TWO DAYS. IS THE 180.80 SITUATION."

22. THE JUDGE THEN EXPLAINS, IN DETAIL, HOW ALL DEFENDANTS GO ABOUT CIRCUMVENTING PLAINTIFF'S RIGHTS TO A FELONY EXAM, AND HOW DEFENDANTS UNLAWFULLY PREVENT CPL 180.80 RELEASE FROM CUSTODY OF THE PLAINTIFF.

THESE UNLAWFUL POLICIES AND PROCEDURES CLEARLY VIOLATE PLAINTIFF'S RIGHT TO DUE PROCESS OF LAW, HIS RIGHT TO A FAIR HEARING AS IS AFFORDED SIMILARLY SITUATED DEFENDANT'S IN NEW YORK STATE, THEREBY VIOLATING ALSO HIS RIGHT TO EQUAL ~~PROTECTION~~ UNDER THE LAW.

23. THE JUDGE SPECIFIES THAT WHEN OR IF PLAINTIFF DEMANDS A HEARING, AS HE IS ENTITLED PURSUANT TO CPL § 180.80, HIS REQUEST IS DENIED FOR NO VALID AND LAWFUL REASON, (BUT DEFENDANTS UNLAWFUL "AGREEMENT"), THEN, IN VIOLATING HIS REQUEST FOR RELEASE FROM CUSTODY

PURSUANT TO CPL 180.80 (BY VIRTUE OF THE D.A. NOT AFFORDING H. PLAINTIFF THE DEMANDED FELONY EXAM), BASED, ONCE AGAIN, ON THE UNLAWFUL "AGREEMENT", THE CASE IS AN UNLAWFULLY ADJURNED FOR TWO DAYS, GIVING THE D.A. THE ABILITY TO PRESENT THE CASE TO A GRAND JURY WITHOUT HAVING TO AFFORD PLAINTIFF HIS CONSTITUTIONAL DUE PROCESS AND STATUTORY RIGHT TO SAID HEARING, AND PREVENTING PLAINTIFF'S ~~REAL~~ RELEASE AS WELL, A DUAL BENEFIT FOR DEFENDANTS.

24. FOR THE ABOVE INTENTIONAL, CALCULATED UNLAWFUL ACTS PURSUANT TO AN UNLAWFUL POLICY AND MAUCIOUS PROCEDURE COMMITTED BY ALL DEFENDANTS, PLAINTIFF SEEKS PUNITIVE MONETARY DAMAGES AS INDICATED BELOW. PLAINTIFF ~~ALSO ALLEGES~~ ALSO ALLEGES THAT DEFENDANTS ALSO DENIED PLAINTIFF HIS RIGHT TO COUNSEL; (U.S. CONST. 6, 14th AMEND.)

III. N.Y. CPL § 190.50 VIOLATION
OF PLAINTIFF'S RIGHT TO APPEAR
AND TESTIFY AT THE GRAND JURY.

25. PLAINTIFF INDICATED, AS STIPULATED CLEARLY ON THE RECORD, (SEE STENOGRAPHIC MINUTES OF APRIL 15, 2015 - ARRAIGNMENT A; EXHIBIT A, PAGE TWO, LINE TWELVE) THAT HE WISHED TO APPEAR TO TESTIFY ON HIS OWN BEHALF, A RIGHT AFFORDED HIM PURSUANT TO NEW YORK CRIMINAL PROCEDURE LAW SECTION 190.50 (5)(a), AT THE GRAND JURY.

CPL § 190.50

26. CPL § 190.50(5)(a) STATES THAT A DEFENDANT MUST BE INFORMED THAT A GRAND JURY PROCEEDING AGAINST A PERSON IS PENDING, IN PROGRESS OR ABOUT TO OCCUR.

CPL § 190.50(5)(a) THEN ADDS IN PERTINENT PART THAT,

"WHEN A CRIMINAL CHARGE AGAINST A PERSON IS BEING, OR IS ABOUT TO BE, OR HAS BEEN SUBMITTED TO A GRAND JURY, SUCH PERSON HAS A RIGHT TO APPEAR BEFORE SUCH GRAND JURY AS A WITNESS IN HIS [OR HER] OWN BEHALF IF, PRIOR TO THE FILING OF ANY INDICTMENT, HE [OR SHE] SERVES UPON THE DISTRICT ATTORNEY OF THE COUNTY A WRITTEN NOTICE MAKING SUCH REQUEST." (EMPHASIS ADDED)

27. ONCE AN ACCUSED SERVES SUCH NOTICE REQUESTING AN APPEARANCE BEFORE THE GRAND JURY, THE D.A. ...

"MUST NOTIFY THE FORE[PERSON] OF THE GRAND JURY OF SUCH REQUEST, AND MUST SUBSEQUENTLY SERVE UPON THE APPLICANT, A NOTICE THAT [THE APPLICANT] WILL BE HEARD BY THE GRAND JURY AT A GIVEN TIME AND PLACE; SUCH PERSON MUST BE PERMITTED TO TESTIFY BEFORE THE GRAND JURY AND TO GIVE ANY RELEVANT AND COMPETENT EVIDENCE CONCERNING THE CASE UNDER CONSIDERATION. [CPL § 190.50(5)(b)]

28. PLAINTIFF, AS IS EVIDENT, PLACED DEFENDANT DONNELLY AND GEORGE SMIT ON NOTICE THAT HE INTENDED TO APPEAR AND EXERCISE HIS STATUTORY AND CONSTITUTIONAL RIGHT TO TESTIFY AT THE GRAND JURY. (EXHIBIT B, MINUTES OF APRIL 15, 2015)

29. ON APRIL 22, 2015 A GRAND JURY HEARING WAS HELD IN THIS CASE. THE PROSECUTOR GEORGE SMIT PRESENTED THE PROSECUTIONS CASE, AND THE GRAND JURY VOTED TO INDICT PLAINTIFF.

~~30. DEFENDANT SMIT FAILED, PURSUANT TO STATUTE,~~ TO NOTIFY THE FOREPERSON OF THE JURY OF PLAINTIFFS INTENT TO TESTIFY, FAILED TO SERVE PLAINTIFF NOTICE OF WHEN AND WHERE HE WILL BE HEARD, AND FAILED TO PHYSICALLY PRODUCE PLAINTIFF INTO THE GRAND JURY HEARING ROOM TO TESTIFY, IN VIOLATION OF THE 6th 5th AND 14th AMENDMENTS TO THE U.S. CONSTITUTION.

31. DEFENDANT SMIT, DEFENDANT NASSAU DISTRICT ATTORNEY'S OFFICE AND THE COUNTY OF NASSAU, HAVE, SINCE APRIL 20, 2015, WRONGFULLY IMPRISONED PLAINTIFF, HELD HIM ON EXTREMELY EXCESSIVE AND HARSH BAIL IN THE AMOUNT OF \$500,000 BOND, WHILE PREVIOUSLY INFORMED OF THE FACT THAT PLAINTIFF HAS BEEN HOMELESS AND UNEMPLOYED, AND COULD NOT POSSIBLY MAKE SUCH BAIL TO SECURE HIS RELEASE. ALL DEFENDANTS HAVE VIOLATED PLAINTIFF'S 8th AMENDMENT RIGHT

TO LIFE, LIBERTY AND FREEDOM AND THE RIGHT
 TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT
 THAT BEING HIS UNLAWFUL IMPRISONMENT DUE
 TO PLA DEFENDANTS UNLAWFUL "POLICY" AND
 "AGREEMENT", AND DEFENDANTS DENIAL
 OF PLAINTIFF'S STATUTORY AND PROCEDURAL
 DUE PROCESS RIGHT TO TESTIFY AT HIS
 GRAND JURY HEARING ON APRIL 22, 2015.

32. PLAINTIFF WILL ALSO SHOW, AT TRIAL, THAT
~~DEFENDANT SMT AND NASSAU DISTRICT~~
 ATTORNEY'S OFFICE FAILED TO PRESENT EXCULPATORY
 EVIDENCE PROVING PLAINTIFF'S INNOCENCE
 AND ALIBI TO THE GRAND JURY ON APRIL
 22, 2015, AN ADDITIONAL FACT PROVING THEIR MALICIOUS PROSECUTION
 OF PLAINTIFF.

33. SAID EXCULPATORY EVIDENCE WAS POSSESSED
 BY DEFENDANTS PRIOR TO THE GRAND JURY
 HEARING AND WAS INTENTIONALLY AND ILLEGALLY
 WITHHELD FROM THE JURY SIMPLY BECAUSE
 IT DIDN'T FAVOR THE PROSECUTIONS CASE, IN
 VIOLATION OF PLAINTIFF'S RIGHT TO DUE PROCESS
 OF LAW AND A FAIR TRIAL.

34. PLAINTIFF POSSESSED A PROCEDURAL DUE PROCESS
 RIGHT PROTECTED BY N.Y.S. STATUTE THAT
 ENFORCES SUCH RIGHT, AND ENSURES THAT
 PROSECUTORS, LIKE THE DEFENDANTS, PRESENT
 EVIDENCE IN A DISINTERESTED, FAIR AND
 IMPARTIAL MANNER, AND ALSO THAT

THE DEFENDANTS PRESENT EVIDENCE WHICH ALSO PROVES PLAINTIFF DID NOT COMMIT THE CRIME.

35. INSTEAD, DEFENDANT SMIT SIMPLY ACTED AS IF HE NEVER OBTAINED THIS EVIDENCE THEREBY SECURING AN INDICTMENT.

THIS ACT, IN CONJUNCTION WITH PROSECUTOR GEORGE SMIT REFUSING TO PRODUCE PLAINTIFF TO TESTIFY BEFORE THE GRAND JURY DIRECTLY AND UNLAWFULLY HAS CAUSED PLAINTIFF'S WRONGFUL AND UNLAWFUL IMPRISONMENT TO THE PRESENT DATE, IN VIOLATION OF HIS 1ST, 8TH, 6TH, 5TH AND 14TH AMENDMENT RIGHTS TO THE U.S. CONSTITUTION. DEFENDANT SMIT AND DONNELLY INTENTIONALLY, AND WITH MALICIOUS INTENT, PLAYED AN AUDIO TAPE TO THE GRAND JURY WHICH WAS HEARSAY, FURTHER VIOLATING PLAINTIFF'S U.S. CONSTITUTIONAL RIGHTS. RELIEF

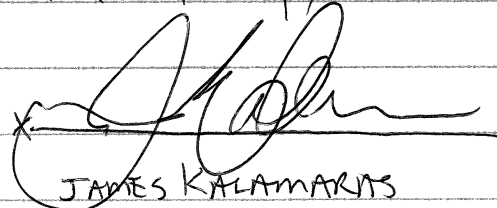
1. PLAINTIFF SEEKS COMPENSATORY DAMAGES IN THE AMOUNT OF \$10,000 PER DAY OF WRONGFUL IMPRISONMENT FROM DEFENDANT NASSAU COUNTY AND NASSAU COUNTY DISTRICT ATTORNEY'S OFFICE. THE FIRST DAY OF DAMAGES BEING APRIL 20, 2015, AND CONTINUING TO ACCRUE TO THE PRESENT DATE, AND UNTIL PLAINTIFF IS RELEASED FROM CUSTODY OF NASSAU COUNTY JAIL.
2. PLAINTIFF SEEKS PUNITIVE DAMAGES FROM EACH DEFENDANT IN THE AMOUNT OF \$500,000 EXCEPT FOR COUNTY OF NASSAU AND THE NASSAU DISTRICT ATTORNEY'S OFFICE. FOR THESE DEFENDANTS, PLAINTIFFS SEEKS 10 MILLION DOLLARS FROM EACH.

PLAINTIFF HAS MADE NO PREVIOUS REQUESTS FOR THE RELIEF SOUGHT HEREIN.

WHEREFORE, PLAINTIFF RESPECTFULLY SEEKS THE RELIEF SOUGHT HEREIN, BY WAY OF JURY TRIAL, AND TO BE COMPENSATED FOR VIOLATIONS OF HIS U.S. CONSTITUTIONAL RIGHTS AS WELL AS HIS NEW YORK STATE PROCEDURAL AND STATUTORY DUE PROCESS RIGHTS, AND FOR SUCH OTHER AND FURTHER RELIEF AS THIS COURT DEEMS PROPER.

DATED: AUGUST

RESPECTFULLY,

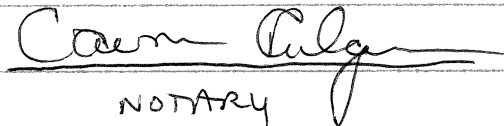


JAMES KALAMARKAS

SWORN TO BEFORE ME THIS

1 DAY OF SEPT, 2015.

PRO-SE PLAINTIFF.



NOTARY

GARMINE PULGRANO
Notary Public, State of New York
No. 01PU6094168
Qualified in Nassau County
Commission Expires June 16, 2019



MADELINE SINGAS
ACTING DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
NASSAU COUNTY

ORGANIZED CRIME & RACKETS BUREAU
RICK WHELAN, CHIEF
ANNE T. DONNELLY, DEPUTY CHIEF

FACSIMILE TRANSMISSION SHEET

TO: Steven Bornwell Esq.

FAX #: 742-3325
TELEPHONE #:

FROM: George Smith

DATE: 6/23/15

RE: Kalamas, James Part 9L 4/17/15 minutes
Part 9L 4/24/15 A.M. minutes

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1 STATE OF NEW YORK: NASSAU COUNTY
2 COUNTY COURT: PT 89

3

4 THE PEOPLE OF THE STATE OF NEW YORK

5

2015NA007659

6

-against-

7

JAMES KALAMARAS,

8

Defendant.

9

April 20, 2015
252 Old Country Road
Mineola, New York

10

11

B E F O R E:

12

HONORABLE JUDGE ERICA PRAGER
ACTING COUNTY JUDGE

13

A P P E A R A N C E S:

14

15

HON. MADELINE SINGAS
NASSAU COUNTY DISTRICT ATTORNEY
99 Main Street
Hempstead, New York 11550
BY: George Smit, ADA

16

17

18

Stephen L. Kunken, Esq. (18B)
6165 Jericho Turnpike
Jericho, New York 11725

19

20

21

MIGUEL M. RIVERA
OFFICIAL COURT REPORTER

22

23

24

25

1 THE CLERK: For the record, Number 35, James
2 Kalamaras. That's you, sir?

3 THE DEFENDANT: Sir yes, sir.

4 MR. SMIT: For the People, Assistant District
5 Attorney George Smit.

6 Good afternoon, your Honor.

7 MR. KUNKEN: Good afternoon, Your Honor. You
8 assigned me. I accept the assignment. Stephen Kunken,
9 k-u-n-k-e-n, 6165 Jericho Turnpike, Commack, New York 11725.

10 I don't know if you need me to clear up the issue
11 of Mr. Kalamaras and his ability to afford a private
12 attorney because when I went down to see him during the
13 break during the lunch hour after you assigned me, I then
14 had a discussion and he indicated that he gave information
15 to the arraignment Judge about money that he was earning
16 when he was employed, but that he hasn't been employed for
17 sometime, and that he's not earning any money and he's
18 not -- he's receiving public assistance for the last six
19 months. As you know, he's just advised me again, and has no
20 resource in obtaining an attorney. I don't know if you need
21 to clear that up.

22 THE COURT: No. I am glad that you raised the
23 issue. Thank you, Mr. Kunken.

24 I was going to address it. Your client before you
25 were on the scene did tell me that he was on public

1 The People are more than glad to put this case into
2 the grand jury, and if that's what they wish, we will be
3 glad to do it.

4 The fact that he didn't come over on Friday the
5 People believe is because he refused sick. That time should
6 not be charged against the People. Furthermore --
7 withdrawn, your Honor.

8 MR. KUNKEN: May I respond briefly?

9 Judge, there is a misassumption on the part of the
10 People that the defendant has some affirmative duty to
11 request his exam.

12 As we argued before off the record, there's no
13 affirmative duty. The district attorney may sit here,
14 especially in Nassau County, and wish or hope or expect or
15 in some other way not prepare to put the case into the Grand
16 Jury because it's usually adjourned, etcetera, etcetera.
17 But none of that happened in this case.

18 For whatever reason that Mr. Kalamaras was not
19 brought over from the jail has nothing to do with what we
20 are doing here today.

21 There was nothing on the record from Friday which
22 his counsel or by his inability to be here that was
23 constituting a waiver of his request for a felony hearing.
24 So, I just think we have to be clear, and I believe that the
25 Court would accept my -- the statutory position, there is no

1 affirmative responsibility on the defendant to demand a
2 hearing.

3 MR. SMIT: Your Honor, the People believe that the
4 defendant's thwart his ability to address this issue by not
5 coming over on Friday. He did so by claiming he's sick. It
6 prevented us from having this discussed this past Friday for
7 him to be assigned counsel, if that's what the Court chose
8 to do based on the \$10,000 a month that he makes as a tattoo
9 artist. And that time in between at a minimum, the 15th and
10 17th, should not be charged to the People, your Honor.

11 THE COURT: So we had a discussion, and I think you
12 know that my view is that if we were in the habit in this
13 County of just going by the statute, then the story of the
14 180.80 would be very clear. He's been in custody since
15 April 14th at 12:40, and his 180.80 has ran today at 12:40.
16 It was lapsed.

17 The issue here is that there is an agreement that
18 exists -- that has existed for I don't even know how many
19 years because it predates me, and I've been a judge for
20 14 years, and so I know it predates my run in the County.
21 But that agreement between Legal Aid and the DA's office is
22 still abide by. And what that agreement provides and my
23 understanding of that agreement and part of the policy
24 pursuant to that agreement has evolved into the handling of
25 these matters outside of the statute. And so what involves

*This
is
nonsense
Guys are
often no
brought over
by corrections
for whatever
reason.
I
guess
P.A. is
some how
claiming he
HAD
lawyer from
arrange with
until he
brought up
in putting*

1 is that when there is a demand made, the DA can choose to
2 either have the felony exam because the defendant is in for
3 a felony, or they present the case to the Grand Jury. And
4 one of the other things that has evolved here is there is no
5 representation, or where there's a demand the case comes to
6 my part and then there's an agreement that the case can be
7 adjourned for two days if the defendant wants to demand a
8 felony exam. So the way it would play here, Mr. Kunkin,
9 you've demanded the exam now, or had the defendant come on
10 Friday he could have demanded it on Friday.

11 You can demand it now on his behalf, and then the
12 practice has become, and this is a very long-standing
13 practice where now the case gets adjourned for two days and
14 the People have to handle it as if it were the next two days
15 is the 180.80 situation.

16 MR. KUNKIN: If I could respond, Judge.

17 It is my understanding, and I know we have had this
18 discussion before on a different case, but in similar
19 circumstances, it's my understanding that the Legal Aid
20 Society's position has been in arraignment, Number 1, never
21 to waive a defendant's right to a felony exam. They never
22 do it and, therefore, I do not believe it was done in this
23 case. That they always indicate that the defendant wishes
24 to testify in the Grand Jury which puts the district
25 attorney on notice of that fact. And that when the case is

1 adjourned, it's not adjourned at the request of the Legal
2 Aid Society. That's my understanding. So it may have been
3 an administrative adjournment. But, once again, if you are
4 saying that it's an affirmative responsibility on the part
5 of defendant --

6 THE COURT: I am not saying that it's an
7 affirmative responsibility. What I am saying is what will
8 happen in this case is the defendant told the arraignment
9 Judge of his financial situation, that being that he makes
10 10,000 a month. As per the statute, she instructed him to
11 retain and adjourned it. She adjourned the case until the
12 17th. The defendant was no show on the 17th, which was
13 Friday, and so everything got put into a holding pattern.

14 We adjourned the case from Friday until today so
15 that hopefully the defendant would appear and we could
16 assess what's going on; whether he's made any effort to hire
17 an attorney, whether an attorney was coming today, or what
18 the situation was. But I am not suggesting it was an
19 affirmative demand that needs to be made. I understand the
20 statute. What I am saying is, one, the policy and practice
21 has lapsed into something. This whole issue has moved into
22 something very different than what it is contemplated in the
23 180.80 statute.

24 MR. KUNKEN: Then, if I could just say, Judge, the
25 issue of counsel, I agree, could be addressed if this was a

1 speedy trial issue. The statute specifically discusses a
2 tolling of the speedy trial statute where the defendant
3 needs time to get an attorney or doesn't have an attorney.
4 But that same statute does not apply in 180.80 so it has
5 nothing, whether I am going to get this lawyer or I am going
6 to get this lawyer. As I said, the district attorney may be
7 sitting here hoping and expecting something to happen but
8 ~~that's not the same as a waiver of the right.~~ And so I
9 respectfully indicate to the Court that there is nothing
10 here to indicate that the statute time period was in any way
11 consented to, requested by, or caused by any of the
12 defendant's actions.

13 The representation of an attorney is a totally
14 aside the point. They might be sitting, waiting for
15 something to happen, wait for a waiver to happen, but that's
16 not the defendant's burden, and it didn't happen in this
17 case. That's my position.

18 THE COURT: You know, we see this quite often where
19 a defendant, where a case gets adjourned to a court date and
20 then the defendant doesn't appear, and then the case gets
21 put into a holding pattern. And now the defendant appears
22 and wants to claim a 180.80 release and so I am not -- by
23 the way, now we are talking hypothetically. We are not
24 talking hypothetically, but I am saying, I think if I am
25 going to handle cases where the agreement is in place, then

1 I need to enforce the agreement all the time and, otherwise,
2 we are going to go back into a straight 180.80
3 interpretation. It's very clear, and that's it. And then I
4 will ignore the agreement.

5 MR. KUNKEN: Right. If I can just say --

6 THE COURT: And that's fine, but then what happens
7 is we have a situation like this where the defendant is a
8 ~~no-show on the date the case is adjourned. He hasn't hired~~
9 an attorney despite the instructions on what to do, and then
10 shows up on Monday and says, "All right. Forget about that
11 \$10,000 a month". Then, "What I told the arraignment Judge,
12 I am on public assistance. Please give me a lawyer, and I
13 want a 180.80 release," where we would've handled all of
14 this on Friday had he shown.

15 MR. KUNKEN: We are making an assumption that he
16 somehow had the ability to get himself to court on Friday.
17 You can't make that assumption, Judge. There are numerous
18 reasons that I have seen in the past. I have gone back to
19 the jail and spoken to people. They refused to come over.
20 "What do you mean I refused to come over? They never called
21 me". So you can't make any assumption that the
22 transportation unit of Nassau County jail did not bring him
23 over here. I think that's besides the fact. The agreement
24 that we are talking about was not any agreement that I had
25 with this Court or with the DA's office. I don't believe

1 it's an agreement that any 18b lawyer has in every case.

2 It's individually, as far as I am concerned. I understand
3 it was the policy and situation here with the DA.

4 THE COURT: Well, he was represented by Legal Aid
5 up until -- well, during arraignment.

6 MR. KUNKEN: And my point to you is Legal Aid's
7 position, as it is my understanding, is to never waive and
8 ~~never consent to postponing the felony hearing, and to my~~
9 knowledge they didn't do it in this case. So, you know, the
10 District Attorney's office is basically saying, "it's our
11 policy if they want a felony hearing we will put it into the
12 Grand Jury". All right. That's their policy. I have no
13 control over that.

14 THE DEFENDANT: May I speak, your Honor, briefly?

15 THE COURT: You can. It's never really good --

16 THE DEFENDANT: Just based on the amount of money
17 and what I stated that I perceived the question to refer to
18 when I am working, how much money do I make per month? You
19 know, when they were asking how much money I make per month.
20 I didn't understand the question. And the way I perceived
21 it was that I was being asked when I am employed because I
22 was under the assumption for the last three years I have
23 been on Medicaid. For the last two years I have collected
24 food stamps. And for the last nine months I collected
25 public assistance cash. So I was under the assumption that

1 Wyndage. I stayed a week in Yapank, Middle Island. I am
2 sorry. I stayed a week or two here and there, all over Long
3 Island. I was at 960 West Main Street, and in River Head at
4 CHH Community Housing. I stayed there. I was transferred
5 there to TLC. I was transferred then, you know. I was
6 informing them.

7 MR. KUNKEN: She is got the picture.
8 THE DEFENDANT: And I did not waive any right to a

9 Grand Jury Hearing, and I did not, you know, intended for
10 anyone to -- I did not attempt to thwart the district
11 attorney's efforts and to bring about a grand jury or a
12 felony exam. I was not called to court that last Friday.
13 No one called my name to appear in court. No one called or
14 told me to wake up to go to court. I was in the 72-hour
15 lockdown and mental observation tier.

16 THE COURT: Okay. Do you want to be heard on
17 the issue of 180.80 versus the two-day adjournment pursuant
18 to the agreement?

19 MR. SMIT: Either, your Honor.

20 As the Court noted it earlier, this has been a
21 longstanding practice. To change the practice now, and for
22 the People to indict similar situated defendant, let's say
23 Mr. Kalamaras, who created a two-tier system, that would
24 have adverse impact.

25 THE DEFENDANT: I am indigent, your Honor.

1 MR. SMIT: For those reasons, the People's policy
2 and practice procedure and custom between the Nassau County
3 District Attorney's office and Legal Aid Society should be
4 adhered to in this case. And that in fact the two days
5 between arraignment and when the defendant was informed to
6 retain his own counsel, which counsel could have appeared on
7 the 17th without the defendant being here, should not be
8 charged and tacked on the People inasmuch as the People did
9 not believe it would be appropriate to release the defendant
10 pursuant to 180.80.

11 THE COURT: When the Judge in arraignment
12 instructed you to retain your own attorney, did you make any
13 effort to retain your own attorney?

14 THE DEFENDANT: Yes, I did, your Honor. I just had
15 not been able to due to the fact I have no funds. I
16 attempted to call an old attorney that I used in the past,
17 and I was going to ask him to take the case pro bono.

18 THE COURT: How come you didn't come to tell me
19 this morning when I asked about the representation?

20 THE DEFENDANT: Because we discussed I was on
21 public assistance. I was going to go for --

22 THE COURT: That's true.

23 THE DEFENDANT: I apologize.

24 THE COURT: You did tell me that. That's true.
25 I find good cause for the People to present the case in the

1 Grand Jury pursuant to the agreement and the practice that
2 has been in place. So the 180.80 application is denied
3 today. And I know you are not making a demand. I know your
4 position, Mr. Kunken. You are not making a demand. You are
5 just continuing what you perceived to be as the defendant's
6 180.80, right?

7 MR. KUNKEN: Correct.

8 THE COURT: ~~So then the agreement there would kick~~

9 in an the DA would have two days to present it to the Grand
10 Jury. So the case will come back Wednesday, April 22nd.

11 MR. KUNKEN: So it's here, felony exam, on
12 Wednesday the 22nd?

13 THE COURT: Correct.

14 MS. LIPTON: 9P?

15 THE CLERK: Yes.

16 MR. KUNKEN: 9P. Thank you, Judge.

17 THE DEFENDANT: Thank you, your Honor.

18 *****

19 Certified to be a true and accurate copy of my stenograph notes.

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Miguel M. Rivera
Official Court Reporter

DISTRICT COURT OF NASSAU COUNTY

FIRST DISTRICT: ARRAIGNMENT A

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THE PEOPLE OF THE STATE OF NEW YORK

:-against-

Docket #:
2015NA007659

JAMES KALAMARAS,

Defendant.

-----X

99 Main Street
Hempstead, New York 11550
April 15, 2015

B E F O R E:

HON. DARLENE HARRIS,
District Court Judge

A P P E A R A N C E S:

For the People:

MADELINE SINGAS, ESQ.
Acting Nassau County D.A.
BY: GEORGE J. SMIT, ESQ.
BY: ANNE DONNELLY, ESQ.
Ass't District Attorneys

For the Defendant:

THE LEGAL AID SOCIETY
40 Main Street
Hempstead, New York 11550
BY: JANA MCNULTY, ESQ.

CATHERINE P. MURPHY
Official Court Reporter

1 COURT CLERK: Page 1, number 3, James
2 Kalamaras.

3 MS. MCNULTY: If I may have a moment to
4 review the paperwork. For the defendant, Jana
5 McNulty for the Legal Aid Society of Nassau
6 County..

7 MR. SMIT: George Smit, Assistant District
8 Attorney Organized Crimes and Rackets.

9 MS. MCNULTY: Waive public reading of the
10 felony complaint. Ask that the case be
11 adjourned for conference.

12 Serving written notice of my client's
13 intent to testify before the Grand Jury
14 pursuant ot 190.50. I'm also handing up to the
15 Court, a notice of appearance and I'm asking
16 that my client be screened for 18B from the
17 bench.

18 THE COURT: Sir, do you own a home?

19 THE DEFENDANT: No ma'am.

20 THE COURT: Are you employed?

21 THE DEFENDANT: Yes.

22 THE COURT: Where at?

23 THE DEFENDANT: I work as a tattoo artist.
24 I'm self-employed.

25 THE COURT: How many people in your